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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 466

S. H. STEVENS AND E. L. STEVENS, CO-PARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SLEET-SHAVER MFG. CO., PETITIONER

v.

FEDERAL CARTRIDGE CORPORATION, A CORPORATION, DOING BUSINESS AS TWIN CITIES ORDNANCE PLANT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Supreme Court of Minnesota (R. 44) is reported at 38 N. W. 2d 154. This opinion rests on the authority of a former opinion reported at 226 Minn. 148, 32 N. W. 312.

JURISDICTION

The judgment of the Supreme Court of Minnesota was entered on August 3, 1949 (R. 44). By order of Mr. Justice Clark on October 28,

1949, the time for filing a petition for a writ of certiorari was extended to and including December 1, 1949 (R. 46). The petition for a writ of certiorari was filed on November 25, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

QUESTION PRESENTED

Whether the state courts erred in declining to entertain the suit of the petitioner, a war contractor seeking termination damages, in the absence of a showing that the petitioner had submitted its claim for settlement under the Contract Settlement Act of 1944 (41 U.S.C. 101-125) and the regulations issued thereunder.[1]

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Contract Settlement Act of 1944, 58 Stat. 649, 41 U.S.C. 101-125, are set forth in Appendix A, *infra,* pp. 8-10. The pertinent provision of 32 C.F.R. (1944 Supp.) 8075.1 is set forth in Appendix B, *infra,* pp. 10-11.

STATEMENT

By complaint filed in the Minnesota District Court in Hennepin County, petitioner sought to

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[1] The petition (pp. 4, 8-10) also poses the question whether the Contract Settlement Act as interpreted by the Supreme Court of Minnesota is invalid under the due process clause of the Fifth Amendment. The question of constitutionality thus sought to be presented was neither raised nor considered in the courts below and is, accordingly, not available to petitioner herein. *Clark* v. *Williard,* 294 U.S. 211, 216; cf. *Blair* v. *Oesterlein Co.,* 275 U.S. 220, 225; *Duignan* v. *United States,* 274 U.S. 195, 200.

recover the sum of $41,769.96 allegedly due under a fixed price subcontract to recondition ammunition boxes (R. 1, 2; Pet. 3).[2] The subcontract had been terminated prior to completion (R. 8-9). In its answer, respondent, a prime contractor with the United States, alleged payment of the sum due under the contract, with the exception of $2,955.47 which had been tendered and was again tendered with the pleading (R. 11). Respondent further alleged that, although requested to do so, petitioner refused to prepare forms for the administrative settlement of its claim (R. 11), as provided by the Contract Settlement Act of 1944 (41 U.S.C. 101-125) and regulations thereunder, and contended that, accordingly, the court lacked jurisdiction over the action (R. 12).

Petitioner's demurrer to this defense was overruled (R. 16) and petitioner appealed to the Supreme Court of Minnesota. The court below held that, as plaintiff had not submitted his claim on the forms prescribed by the Act and regulations, the judgment of the trial court should be sustained (R. 24-37). On remand, petitioner elected not to amend its pleadings (R. 39). Respondent then moved for judgment on the pleadings (R. 38, 39). This motion was granted and judgment entered for respondent on May 13,

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[2] The sum sought in the complaint was reduced, in a subsequent pleading, to $17,264.56, petitioner admitting payment for some 93,080 boxes (R. 13, 14, 15). Petitioner then added a claim for $24,505.40 for loss of anticipated profits (R. 15-16).

1949 (R. 39, 40). A petition for rehearing was denied on May 26, 1948 (R. 38), and the Supreme Court for Minnesota affirmed the judgment on August 3, 1949, on the basis of its former opinion (R. 44).

ARGUMENT

1. The question whether petitioner had a right to sue respondent without first pursuing the available administrative remedies does not merit review by this Court. In so far as we can ascertain, the facts of the case are unique. In sharp contrast is the action taken by substantially all other war contractors in connection with termination claims. War contractors, both prime contractors and subcontractors, have universally accepted and utilized the administrative machinery provided by the Contract Settlement Act of 1944 and regulations issued thereunder, with the result that the vast problem of settlement of termination claims is now substantially completed.[3] The basic Congressional objective in passing the Act, the speedy settlement of such claims, has been fully attained by the use of administrative settlement pro-

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[3] Contract Terminations and Settlements, Twenty First Report of the General Services Administration to The Congress, October, 1949, p. 1. Of 320,005 contracts terminated from the beginning of war production to September 30, 1949, only 252 were pending settlement as of September 30, while 319,758 were settled. In percentage figures, 99.9% were settled while .1% were pending settlement. Of 66 billions of cancelled commitments, 65.6 billions were settled as of June 30, 1949 while only .5 billion were pending settlement, or .7%.

cedures.[4] This fact alone suggests the inappropriateness of certiorari.

2. The challenged holding of the court below, that there was no jurisdiction to entertain petitioner's suit for claimed termination damages since the suit was prematurely brought, rests upon two grounds. Primarily, the court below gave recognition to the broad purpose of Congress in providing administrative procedures for the consideration and speedy settlement of the termination claims of all war contractors (R. 30).[5] This recognition was derived from a detailed examination of the provisions of the Act, regulations issued thereunder, and other legislative materials (R. 31-35). The court below concluded that a fair reading of these materials in light of the congressional purpose indicated an intention that subcontractors submit termination claims for administrative consideration as a condition precedent to the right to enforce damage claims by litigation (R. 37).[6] In addition, the court

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[4] Contract Settlement Act of 1944, § 1(a), (b), 41 U.S.C. 101 (a), (b), Appendix A, *infra*, p. 8; S. Rept. 836, 78th Cong., 2d sess., p. 1; H. Rept. 1590, 78th Cong., 2d sess., pp. 18, 19.

[5] The term "war contractor" is defined in the Contract Settlement Act of 1944 to include subcontractors. Section 3(c), 41 U.S.C. 103 (c).

[6] The provisions so examined were apparently considered by the court below sufficient to overcome contrary implications which might be drawn from certain excerpts from the legislative materials. In this connection, particular reference might be made to petitioner's reliance on 10 C.F.R. (1944 Supp.) 846.625-1 (Pet. 10). While this section recognizes

below also found a specific and more narrow basis of decision in the regulation (32 C.F.R. (1944 Supp.) 8075.1) which required subcontractors, as well as prime contractors, to prepare and submit terminations claims on prescribed standard forms (R. 31-32).[7] The claims thus prepared were, in the case of subcontractors, to be submitted to prime contractors.

In essence, the court below held that petitioner's suit was premature until it had afforded to the United States a reasonable opportunity, directly or indirectly, to examine the claim for the purpose of administrative settlement and to determine whether settlement by agreement could not be reached. The holding is, of course, in accord with the general principles repeatedly applied in

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that judgments may be obtained by subcontractors against prime contractors, it is our view that this recognition is given solely for the purpose of settlement between the United States and the prime contractor. The section does not preclude the interpretation given by the court below to the standard form requirement (R. 31-32), namely, that the submission of a claim by a subcontractor was a condition precedent to the right to sue. Reference may also here be made to petitioner's reliance on certain statements made in the decision of the Board of Contract Appeals in *Precision Metal & Machine Co.* v. *War Department*, 3 C.C.F. 1001. That decision merely held that a subcontractor was not entitled to invoke the various review steps provided by the Act in a case in which the United States had declined to entertain the responsibility for settling the termination claim. Unlike petitioner's position in the present case, the subcontractor in the *Precision Metal* case had submitted a claim for settlement.

[7] It should be noted that petitioner conceded, in the court below, the validity of an exercise of congressional power thus to cover subcontractors under Contract Settlement Act procedure (R. 27).

decisions of this Court dealing with suits prematurely brought. *Myers* v. *Bethlehem Corp.*, 303 U.S. 41; *Macauley* v. *Waterman S. S. Corp.*, 327 U.S. 540; *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U.S. 752; *Lichter* v. *United States*, 334 U.S. 782, 789-793. And it is important to note, in assessing the need for the issuance of a writ of certiorari in this case, that the decision of the court below does not finally and definitively dispose of petitioner's claim. Petitioner still has the right to submit its claim for settlement and can, after invoking the administrative procedure, resort to further litigation if necessary.[8]

CONCLUSION

The petition for a writ of certiorari should be denied.

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DECEMBER, 1949.

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[8] The Minnesota Statute of Limitations on contract actions is six years. Minnesota Statutes Annotated, section 541.05. The termination notice in this case was given in October, 1944 (R. 8), and petitioner, accordingly, has until October, 1950, in which to bring a proper suit in the state court.

APPENDIX A

The pertinent sections of the Contract Settlement Act, 1944, 58 Stat. 649, 41 U. S. C. 101-125, provide as follows:

SECTION 1. The Congress declares that the objectives of this Act are—

(a) to facilitate maximum war production during the war, and to expedite reconversion from war production to civilian production as war conditions permit;

(b) to assure to prime contractors and subcontractors, small and large, speedy and equitable final settlement of claims under terminated war contracts, and adequate interim financing until such final settlement;

(c) to assure uniformity among Government agencies in basic policies and administration with respect to such termination settlements and interim financing;

(d) to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing prime contractors and subcontractors with notice of termination of their war contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security;

(e) to assure the expeditious removal from the plants of prime contractors and subcontractors of termination inventory not to be retained or sold by the contractor;

(f) to use all practicable methods compatible with the foregoing objectives to prevent improper payments and to detect and prosecute fraud. * * *

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SEC. 3. As used in this Act—

* * * * *

(c) The term "war contract" means a prime contract or a subcontract; and the term "war contractor" means any holder of one or more war contracts.

* * * * *

SEC. 4. * * *

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(b) In order to insure uniform and efficient administration of the provisions of this Act, the Secretary of the Treasury, subject to such provisions, by general orders or general regulations—

(1) shall prescribe policies, principles, methods, procedures, and standards to govern the exercise of the authority and discretion and the performance of the duties and functions of all Government agencies under this Act; and

(2) may require or restrict the exercise of any such authority and discretion, or the performance of any such duty or function, to such extent as he deems necessary to carry out the provisions of this Act.

(c) The exercise of any authority or discretion and the performance of any duty

or function, conferred or imposed on any Government agency by this Act, shall be subject to such orders and regulations prescribed by the Secretary of the Treasury pursuant to subsection (b) of this section. Each Government agency shall carry out such orders and regulations of the Secretary of the Treasury expeditiously, and shall issue such regulations with respect to its operations and procedures as may be necessary to carry out the policies, principles, methods, procedures, and standards prescribed by the Secretary of the Treasury. Any Government agency may issue such further regulations not inconsistent with the general orders or regulations of the Secretary of the Treasury as it deems necessary or desirable to carry out the provisions of this Act.

* * * * *

APPENDIX B

The pertinent section of 32 C.F.R. (1944 Supp.) 8075.1 provides as follows:

§ 8075.1 *Settlement proposal forms.* The attached forms, designated thereon Office of Contract Settlement Forms 1, 1a, 1b, 2a, 2b, 2c, 2d, and 3, are prescribed for use by all government agencies in connection with the settlement of claims under terminated fixed-price war supply contracts in accordance with the following "Instructions for use of

Standard Contract Settlement Proposal Forms":

Instructions for Use of Standard Contract Settlement Proposal Forms

General

October 1, 1944.

1. *Standard Forms provided.* The Standard Forms are prescribed by the Director of Contract Settlement under the Contract Settlement Act of 1944. They are required to be used by all prime contractors and subcontractors in submitting proposals for settlement of claims under terminated fixed-price war supply contracts. This includes fixed-price supply subcontracts underlying cost-plus-fixed-fee prime contracts or subcontracts. The forms should be used by prime contractors for filing with the Government, and by subcontractors for filing with the company from which the notice of termination was received. * * *

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